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DESIGNER TICKETS & TOURS, INC. and
Defendants KURT UNGER and KEN SOLKY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

TICKETMASTER L.L.C., a Virginia
limited liability company,

Plaintiff,

vs.

DESIGNER TICKETS AND TOURS,
INC., et al.,

Defendants.

Case No. CV 07-1092 ABC (JCx)

Honorable Audrey B. Collins
Courtroom 680

**STIPULATED PROTECTIVE
ORDER**

[\[Note Changes Made By Court\]](#)

DESIGNER TICKETS & TOURS,
INC., a California corporation,

Counterclaimant,

vs.

TICKETMASTER L.L.C., a Virginia
limited liability company,

Counterdefendant.

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that protection is afforded only to material so entitled, and based on good cause, it is, pursuant to the Court's authority under F.R.C.P. 26(c)(7), and with the consent of the parties, hereby ORDERED:

1. **Scope of Order.** This Order is intended to facilitate the parties' production of information and documents as part of voluntary disclosure and in response to discovery requests. Nothing in this order is to be construed to expand or limit the parties' discovery obligations. This Order covers the production and use of all Discovery Materials in this action that constitute, contain or disclose, in whole or in part, information which the designating party deems to be "Confidential Information" or "Sensitive Confidential Information." All Documents, Pleadings, and testimony containing Confidential Information or "Sensitive Confidential Information" shall be protected in accordance with the terms of this Order. Although Discovery Materials and Pleadings that quote, summarize, or contain materials entitled to protection may be accorded status as Confidential Information or Sensitive Confidential Information, to the extent feasible these materials shall be prepared in such a manner that the Confidential Information or Sensitive Confidential Information is bound separately from that not entitled to protection.

1 2. **General Definitions.** For purposes of this Order, the following
2 terms have the following meanings:

3 a. “Document” shall mean and include, without limitation,
4 all materials, electronic information and tangible things defined as broadly as
5 permitted under Federal Rule of Civil Procedure 34.

6 b. “Discovery Materials” shall mean and include, without
7 limitation, Documents, responses to interrogatories, requests for admissions, or
8 other discovery requests, physical objects, samples, CD-ROMs, tapes, or other
9 items, deposition transcripts and exhibits thereto, and information provided by or
10 on behalf of the Parties or any third party pursuant to subpoena or otherwise created
11 or included in the course of discovery.

12 c. “Pleadings” shall mean and include, without limitation,
13 all papers, motions, briefs, affidavits, declarations, exhibits, etc., filed with the
14 Court.

15 d. “Party” or “Parties” shall mean and include the parties to
16 this litigation and their respective current and former officers, employees, agents,
17 affiliates and subsidiaries.

18 e. “Designating Party” shall mean the Party designating
19 Discovery Material as “Confidential Information” or “Sensitive Confidential
20 Information.”

21 3. **Confidential Information Defined.** For purposes of this Order,
22 "Confidential Information" shall mean and include any information (regardless of
23 how it is generated, stored, or maintained), including Documents, Discovery
24 Materials and Pleadings, that contains information within the scope of Federal Rule
25 of Civil Procedure 26(c) or which is a trade secret, proprietary, confidential
26 commercial or business information, or otherwise confidential or private. For
27 certain limited types of “Confidential Information,” the producing party may further
28 designate such Confidential Information as “Sensitive Confidential Information,” as

discussed more fully in Section 4 below. Disclosure of such Documents shall continue to be governed by the terms of any such previous order.

4. **Sensitive Confidential Information Defined.** “Sensitive Confidential Information” is information which, if known by the party to whom it is disclosed, would be inherently harmful to the Designating Party’s business. “Sensitive Confidential Information” may include the Designating Party’s proprietary financial information or reports, to the extent any such information or reports is not relevant to any claim for damages. “Sensitive Confidential Information” may not include any information, testimony or Documents relevant to any Designating Party’s damages claims or calculations, or other information ordered by the Court to be disclosed under particular conditions and to specified parties. Disclosure of such Documents shall continue to be governed by the terms of any such previous order.

5. **Designating Protected Material.** All designations shall be made in good faith by the Designating Party and made at the time of disclosure, production, or tender, provided that the inadvertent failure to so designate does not constitute a waiver of such claim, and a producing party may so designate the information after such information has been produced, with the effect that such information is thereafter subject to the protections of this Order. The designation of Discovery Materials in the form of Documents and Discovery Materials other than depositions or other pretrial testimony as Confidential Information or Sensitive Confidential Information shall be made by the Designating Party in the following manner:

a. Documents designated “Confidential” shall be so marked by affixing the legend “CONFIDENTIAL” or similar confidential designation on each page containing any Confidential Information (or in the case of computer medium on the medium and its label and/or cover) to which the designation applies.

1 b. Documents designated “Sensitive Confidential” shall be
2 so marked by conspicuously affixing the legend “SENSITIVE CONFIDENTIAL”
3 on each page (or in the case of computer medium on the its label and/or cover) to
4 which the designation applies. Designations of “Sensitive Confidential” shall
5 constitute a representation that such Discovery Material has been reviewed by an
6 attorney for the Designating Party and that there is a valid basis for such
7 designation because the relevant Discovery Material is highly confidential, the
8 disclosure of which is likely to be commercially damaging to the Designating Party.
9 Such information should not be disclosed to any employees of the Party receiving
10 such information, absent Court order, even though employees are bound by this
11 Order and Agreement.

12 c. If a Document has more than one designation, the more
13 restrictive or higher confidential designation applies.

14 6. **Designation of Deposition Testimony.** All depositions taken
15 in this case and the transcripts thereof shall automatically be treated as Sensitive
16 Confidential Information for 20 days after receipt of the transcript. This 20-day
17 period will begin running the day after the transcript is received by counsel for the
18 party defending the deposition and will conclude at the end of the 20th consecutive
19 day (including weekends and holidays). Any confidentiality designation must be
20 sent to opposing counsel by the end of the 20th day. During the deposition or
21 during this 20-day time period, any Party may designate the deposition or any
22 portion thereof as Confidential Information or Sensitive Confidential Information.
23 Upon delivery of such designation to the other Party, the entire deposition transcript
24 or the designated portion thereof shall be treated as Confidential Information or
25 Sensitive Confidential Information subject to this Stipulation. If any deposition
26 transcript or portion thereof has not been designated as Confidential Information or
27 Sensitive Confidential Information by the expiration of the 20-day period after
28

1 receipt of the transcript, that deposition or portion will no longer be Confidential
2 Information or Sensitive Confidential Information.

3 7. **Basic Disclosure Principles.** Neither the Parties nor their
4 counsel shall permit disclosure of Confidential Information or Sensitive
5 Confidential Information to anyone except as provided by this Order, and only after
6 the conditions stated in this Order have been met.

7 8. **Disclosure of Confidential Information.** Confidential
8 Information may not be disclosed to any person except:

9 a. Any Party to this action, including their Information
10 Technology staff;

11 b. Counsel for the Parties in this action, including their
12 paralegals and clerical staff, experts, consultants and in-house counsel;

13 c. Experts (whether consulting or testimonial) in this action
14 to whom disclosure is reasonably necessary to the conduct this action, or to
15 maintain the security of the ticketmaster.com website, provided that experts shall
16 not have access to Confidential Information or Sensitive Confidential Information
17 without having first read, acknowledged, and agreed to be bound by this Order by
18 executing the Declaration attached as Exhibit A;

19 d. The Court and its personnel;

20 e. Court reporters engaged for depositions, hearings or trial;

21 f. Witnesses in this action to the extent necessary for the
22 conduct of this litigation and who have first signed the Agreement to be Bound by
23 Protective Order attached as Exhibit A;

24 g. The author(s) or any recipient of the document or the
25 original source of the information in any document; and

26 h. Professional vendors that provide litigation support
27 services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
28

1 demonstrations, etc.) and their employees who have first signed the Agreement to
2 be Bound by Protective Order attached as Exhibit A.

3 9. **Disclosure of Sensitive Confidential Information.** Sensitive
4 Confidential Information shall be subject to the same restrictions as Confidential
5 Information but Sensitive Confidential Information may only be disclosed to the
6 parties identified in Sections 8(b)-(e) and (g)-(h), above, and 8(f) above to the
7 extent counsel has a good faith belief that the witness currently has or would be
8 expected to have knowledge of the contents of the document, or of its subject
9 matter, and to no one else.

10 10. **Use of Discovery Material.** Confidential Information and
11 Sensitive Confidential Information produced in this litigation shall be used for
12 purposes of this action, and to maintain the security of ticketmaster.com. The
13 persons or entities identified in Sections 8-9, above, to whom Confidential
14 Information or Sensitive Confidential Information is disclosed pursuant to this
15 Order shall not make any copies of or use such Confidential Information or
16 Sensitive Confidential Information for any purpose, whatsoever, except those
17 related to this action or to maintain the security of ticketmaster.com. Nothing in
18 this Order shall prohibit any person or entity owning rights in or to Confidential
19 Information or Sensitive Confidential Information from using such information in
20 any manner consistent with such ownership rights, including, for example, the use
21 of Confidential Information maintained by the Parties in the ordinary course of the
22 Parties' business, though any prohibition or restriction on any such use of such
23 Confidential Information or Sensitive Confidential Information in any previous
24 order of the Court shall continue to govern use of such information. This Order
25 shall not limit the right of any Party to assert any claim in this or any other action.

26 11. **Offering Materials into Evidence.** If in connection with any
27 motion or other proceeding in this action or Related Actions, any Party intends to
28 offer into evidence, reference, or attach as exhibits to any Pleading any Documents

1 or other materials that would reveal or tend to reveal Confidential Information or
 2 Sensitive Confidential Information, such evidence shall be redacted to remove all
 3 Confidential Information or Sensitive Confidential Information that is not
 4 reasonably necessary for the Court to understand the purpose of the Document as
 5 described in the Pleading and to effect the reasonable purpose of the offering party
 6 in submitting the document.

7 **12. Filing of Materials Containing Confidential Information.**

8 When a Party intends to file with the Court, or otherwise introduce into evidence,
 9 any Documents, testimony, or any other material containing Confidential
 10 Information or Sensitive Confidential Information that cannot be redacted pursuant
 11 to Section 11, above, counsel for the filing or offering party shall notify counsel for
 12 the Designating Party of such intent. Such notifications shall be made within a
 13 reasonable time not less than two business days before filing, such that the
 14 Designating Party has an opportunity to object to the necessity of the disclosure of
 15 the Document as presented and to work out an acceptable alternative to the
 16 proposed disclosure. The parties shall endeavor to reach agreement on any
 17 redactions or other methods which may be available to permit the filing or
 18 introduction of the Confidential Information or Sensitive Confidential Information
 19 with the Court such that the evidentiary objectives of the offering party can be met
 20 without disclosure of Confidential Information or Sensitive Confidential
 21 Information.

22 **13. Filing Under Seal.** [The parties must comply with Local Rule](#)
 23 [79-5.1.](#) Any Confidential Information or Sensitive Confidential Information filed
 24 with the Court shall be [submitted for filing](#) ~~filed~~ in a sealed envelope bearing the
 25 designation "Confidential: Subject to Protective Order."

26 **14. Right To Redact.** Notwithstanding the right to designate
 27 information as Confidential or Sensitive Confidential, the Parties may redact from
 28 Discovery Material information that would qualify as Sensitive Confidential

1 Information under this Order, but which is irrelevant or otherwise not responsive to
2 the discovery request giving rise to production of the Discovery Material, subject to
3 paragraph 18 below.

4 15. **Duration.** This Order shall continue to be binding throughout
5 and after the conclusion of this action, including any appeal thereof. This Order, as
6 an Agreement, shall remain in effect until all Confidential Information or Sensitive
7 Confidential Information is returned to the Designating Party or destroyed, as
8 provided below. Within thirty (30) days after termination of this Action by
9 dismissal, final non-appealable judgment or otherwise, each Party shall return to
10 counsel for the Designating Party all information designated Confidential
11 Information or Sensitive Confidential Information under this Order, including all
12 copies, prints, excerpts, and other reproductions of said information, however
13 generated or maintained. In the alternative, counsel receiving Confidential
14 Information or Sensitive Confidential Information may supervise the destruction of
15 all Confidential Information or Sensitive Confidential Information, including all
16 copies, prints, excerpts, and other reproductions of said information, however
17 generated or maintained. Counsel shall then advise all parties' counsel in writing
18 that all Confidential Information or Sensitive Confidential Information, including
19 all copies, prints, excerpts, and other reproductions of said information, however
20 generated or maintained, have been destroyed or returned.

21 16. **Limiting Disclosure.** All reasonable efforts shall be made by
22 counsel of record to limit disclosure of Confidential Information or Sensitive
23 Confidential Information to the minimum number of persons necessary to conduct
24 this action or to maintain the security of the ticketmaster.com website.

25 17. **Access to Additional Person(s).** To the extent a Party decides
26 that in order to understand or evaluate any Confidential Information the assistance
27 of person(s) not otherwise entitled to access to Confidential Information is
28 necessary, that party may request permission of the Designating Party to show such

1 information to the specifically identified additional person(s). The Party receiving
 2 the request shall respond promptly and shall not unreasonably withhold consent. If
 3 permission is granted, the Confidential Information may be shown to the additional
 4 person(s), subject to the requirement that such person(s) agree to be bound by the
 5 terms of this Order and Agreement. Any disclosure of Confidential Information
 6 under this paragraph shall not result in a waiver or termination of any of the rights
 7 and obligations to any other Party or person under this Order. If permission is
 8 denied, the requesting Party may file an application *in camera* and under seal with
 9 the Court referencing the Confidential Information to be disclosed and, where
 10 appropriate, stating with particularity the reason or reasons assistance is needed,
 11 and naming the person to whom the Confidential Information is to be disclosed to
 12 obtain assistance.

13 18. **Challenges to Confidential Designation or to Redactions in**
 14 **Discovery Materials.** Such challenges shall be governed by Local Rule 37. In the
 15 event the recipient party disagrees with any designation of confidentiality or with
 16 the redaction of any information in Discovery Material, the Parties shall attempt to
 17 resolve such dispute on an informal basis. If the dispute is not resolved informally,
 18 the recipient party, by motion, may contest the confidential designation or
 19 redaction. Pending resolution of the motion, the disputed material will continue to
 20 be treated as designated (*i.e.*, either Confidential or Sensitive Confidential). If the
 21 Court determines that any materials are not entitled to confidential treatment,
 22 confidentiality will nonetheless be maintained for fifteen (15) days subsequent to
 23 the Court's decision unless the Court, upon motion and for good reason shown,
 24 shall reduce or lengthen the time. If the Court determines that any materials are not
 25 entitled to redaction, the producing party shall disclose the redacted information
 26 within fifteen (15) days subsequent to the Court's decision unless the Court, upon
 27 motion and for good reason shown, shall reduce or lengthen the time.

28 19. **Declassification.** The restrictions on disclosure and use of

1 Confidential Information or Sensitive Confidential Information set forth herein
 2 shall not continue to apply to information, which, at the time of disclosure, or
 3 thereafter, becomes a part of the public domain by publication or otherwise, other
 4 than a result of a wrongful act or failure to act on the part of the Party claiming this
 5 exclusion. However, the restrictions shall continue to apply if such publication or
 6 other disclosure results from criminal, tortious or otherwise unlawful acts or
 7 omissions. A Party seeking to declassify material designated as Confidential
 8 Information may move the Court for a ruling that the material is not entitled to such
 9 status and protection. Any such motion is governed by Local Rule 37.

10 20. **Right to Assert Other Objections.** This Order shall not be
 11 construed as requiring any Party to produce information or documents which are
 12 privileged or otherwise protected from discovery by the Federal Rules of Civil
 13 Procedure. Nothing herein shall be construed or applied to affect the rights of any
 14 Party to discovery or to assert any privilege or objection, or to prohibit any Party
 15 from seeking such further provisions or relief as it deems necessary or desirable
 16 regarding this Order or the matter of confidentiality.

17 21. **Use During Trial.** Subject to the law which favors public
 18 disclosure of court proceedings (see Kamakana v. City and County of Honolulu,
 19 447 F.3d 1172, 1178-80 (9th Cir. 2006); Foltz v. State Farm Mutual Automobile
 20 Insurance Co., 331 F.3d 1122 (9th Cir. 2002)) this ~~This~~ Order is intended to govern
 21 the exchange and use of materials, information and Documents during discovery,
 22 trial preparation, and post-trial proceedings. Questions regarding the use of
 23 Confidential Information or Sensitive Confidential Information during the trial of
 24 this action, if any, will be addressed by the Court at a later time prior to or during
 25 trial.

26 22. **Subpoena or Order.** If a Party is served with a subpoena or an
 27 order issued in other litigation that would compel disclosure of any information or
 28 items designated in this action as Confidential or Sensitive Confidential, counsel for

1 the receiving party must so notify counsel for the Designating Party in writing
2 immediately, and in no event more than five court days after receiving the subpoena
3 or order. Counsel for the receiving party also must inform in writing the party who
4 caused the subpoena or order to issue in the other litigation that some or all the
5 material covered by the subpoena or order is the subject of this Order.

6 The purpose of imposing these duties is to alert the interested parties to
7 the existence of this Order and to afford the Designating Party in this case an
8 opportunity to try to protect its confidentiality interests in the court from which the
9 subpoena or order issued. Nothing in these provisions should be construed as
10 authorizing or encouraging a receiving party in this action to disobey a lawful
11 directive from another court.

12 23. **Inadvertent Production.** If a Party through inadvertence
13 produces or provides discovery that it believes is subject to a claim of attorney-
14 client privilege, common interest privilege, or work product immunity, the
15 producing party may give written notice to the receiving party that the Document is
16 subject to a claim of attorney-client privilege, common interest privilege, or work
17 product immunity and request that the Document be returned to the producing
18 party. The receiving party shall immediately return to the producing party all
19 copies of such Document and shall return or destroy all excerpts and summaries
20 thereof. Return of the document by the receiving party shall not constitute an
21 admission or concession, or permit any inference, that the returned Document is, in
22 fact, properly subject to a claim of attorney-client privilege, common interest
23 privilege or work product immunity, nor shall it foreclose the receiving party from
24 moving for an order that such Document has been improperly designated as subject
25 to a claim of attorney-client privilege, common interest privilege, or work product
26 immunity or should be produced for reasons other than a waiver caused merely by
27 the inadvertent production. The inadvertent disclosure of any privileged documents
28 shall not be deemed a waiver of that privilege as to any other Documents, testimony

1 or evidence.

2 24. **Enforcement.** This Order and Agreement may be enforced by
3 an order of specific performance, as well as any claim for damages. Nothing in this
4 Order abridges the right of any person to seek its modification by the Court in the
5 future.

6 AGREED TO BY:

7
8 /s/
Counsel for Plaintiff and Counter-
9 Defendant Ticketmaster L.L.C.

February 13, 2008
Date

10 /s/
11 Counsel for Defendant and Counter-
12 Claimant Designer Tickets and Tours, Inc.
and Defendants Kurt Unger and Ken Solky

February 12, 2008
Date

13 SO ORDERED:

14
15 DATED: March 3, 2008

16
17
18 /s/
19 JACQUELINE CHOOLJIAN
MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____[print or type full name], of
_____[print or type full address],
declare under penalty of perjury that I have read and understand the Stipulated
Protective Order that was entered by the United States District Court for the Central
District of California in the case of *Ticketmaster, L.L.C. v. Designer Tickets and
Tours, Inc.*, Case No. CV-07-1092 ABC (JCx). I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order. I
further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____